

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**ASD SPECIALTY HEALTHCARE, INC., d/b/a )  
ONCOLOGY SUPPLY COMPANY )**

**Plaintiff,**

**v.**

**ROBERT G. HICKES, M.D., and ROBERT G. )  
HICKES, M.D., P.C. )**

**Defendants.**

**CIVIL ACTION NO.  
1:05CV592-T**

**PLAINTIFF'S MOTION TO MODIFY THE JUDGMENT ENTERED AGAINST  
DEFENDANT ROBERT G. HICKES, M.D.**

The Plaintiff, ASD Specialty Healthcare, Inc., d/b/a Oncology Supply Company (hereafter "ASD"), by and through its counsel, hereby moves this Honorable Court to modify the Judgment entered against Defendant Robert G. Hickes (hereafter "Hickes") to include the express determination that there is no just reason for delay of entry of final judgment against Hickes under Federal Rule of Civil Procedure 54(b). In support of this motion, ASD states as follows:

1. Federal Rule of Civil Procedure 54(b) provides:

When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims of parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

2. Rule 54(b) further provides:

In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

3. On February 23, 2006, the Court entered Judgment against Hickes and expressly directed the clerk to enter it as a final judgment. However, the Judgment does not include the express determination that there is no just reason for delay of entry of final judgment against Hickes.

4. Because the claims against another defendant, Robert G. Hickes, M.D., P.C., remain pending in this action, and the judgment against Hickes did not include the express determination that there is no just reason for delay of entry of final judgment against Hickes, this Judgment does not terminate the action as to Hickes under Rule 54(b).

5. There is no just reason for delay of entry of final judgment against Hickes because, through his admissions, Hickes concedes the judgment entered against him and delaying entry of final judgment against Hickes works to ASD's prejudice.

**WHEREFORE**, ASD respectfully requests that the Court to modify the its Judgment entered against Hickes to include the express determination that there is no just reason for delay of entry of final judgment against Hickes, as required by Federal Rule of Civil Procedure 54(b).

Respectfully submitted,

/s Heath A. Fite  
Heath A. Fite (FIT011)

Attorney for Plaintiff  
ASD SPECIALTY HEALTHCARE, INC.

**OF COUNSEL:****BURR & FORMAN LLP**

3100 Wachovia Tower

420 North 20th Street

Birmingham, Alabama 35203-5206

Telephone: (205) 251-3000

Facsimile: (205) 458-5100

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of February, 2006, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all properly registered parties, including Clyde Ellis Brazeal, III.

I hereby certify that on the 24th day of February, 2006, I served the foregoing upon the following via United States mail:

Robert G. Hickes, M.D., P.C.

c/o Robert J. Holdsworth, Jr.

Holdsworth &amp; Feeney, LLP

950 Danby Road, Suite 210

Ithaca, NY 14850

/s Heath A. Fite

O Counsel